

OFFICE OF THE ATTORNEY GENERAL



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Honorable Brent M. Craig
Municipal Judge
Municipal Court of Decatur
P. O. Box 488
Decatur, AL 35602-0488

Bail Bonds - Courts - Bail

A judge or magistrate may, if reasonably necessary, require a cash bond of defendant who fails to appear and, as a result, is charged with contempt.

Dear Judge Craig:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

May a judge or magistrate require only a cash bond (as opposed to a property or surety bond) for those defendants that failed to appear for a proceeding in their initial case and, as a consequence, were charged with contempt (failure to appear)?

FACTS AND ANALYSIS

Based upon the Court of Criminal Appeals ruling in Shabazz v. State, 440 So.2d 1200 (Ala.Cr.App. 1983), the Attorney General has opined that a court may not require a cash bond to insure the defendant's initial appearance, but may require a cash bond after the defendant's first failure

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to appear. Attorney General's opinion to Allen L. Tapley, dated October 8, 1987, A.G. No. 88-00010. Shabazz has been cited in Ex parte Phelps, 612 So.2d 1177, 1179 (Ala. 1992) and in State v. Blake, 642 So.2d 959, 968 (Ala. 1994) and remains the law in this state. Thus, it is the opinion of the Attorney General that a judge or magistrate may require a cash bond for those defendants who fail to make an initial appearance and, as a consequence, are charged with contempt.

We also refer you to Rule 7.3(b)(6), Alabama Rules of Criminal Procedure, which authorizes the court to set any conditions for bond which the court deems reasonably necessary.

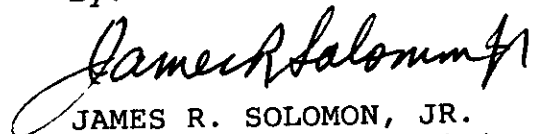
CONCLUSION

A judge or magistrate may, if reasonably necessary, require a cash bond (as opposed to a property or surety bond) for those defendants who fail to appear for a proceeding in their initial case and, as a consequence, are charged with contempt for failure to appear.

I hope this sufficiently answers your question. If our office can be of further assistance, please contact Jane L. Brannan of my staff.

Sincerely,

JEFF SESSIONS
Attorney General
By:

A handwritten signature in cursive script, appearing to read "James R. Solomon, Jr.", written in dark ink.

JAMES R. SOLOMON, JR.
Chief, Opinions Division

JS/JLB/jho
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